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IN THE

Supreme Court of the United States.

October Term, 1951.

No.

PATERSON PARCHMENT COMPANY, A CORPORATION,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, AND INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, BRISTOL LOCAL NO. 500, UNINCORPORATED ASSOCIATIONS,
Respondents.

PETITION FOR WRIT OF CERTIORARI

to the United States Court of Appeals for the Third Circuit.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Paterson Parchment Paper Company, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled cause on August 1, 1951, affirming the judgment of the United States District Court for the Eastern District of Pennsylvania.

Opinions Below.

The ruling of the District Court (R-164) [1] granting respondent's motion for a directed verdict is not reported.

The opinion of the Court of Appeals (R-293) is reported at 191 F. 2d 252.

Jurisdiction.

The judgment of the Court of Appeals was entered on August 1, 1951 (R-293). The order of the Court of Appeals denying petitioner's timely Petition for Rehearing (R-301) was entered on September 18, 1951 (R-315).

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Statute Involved.

This case involves two sections of the Labor-Management Relations Act of 1947, commonly referred to as the Taft-Hartley Act, 61 Stat. 136, 29 U. S. C. (Supp. III) §§ 151, et seq:

(1) Section 301, 29 U. S. C. § 185, granting the district courts jurisdiction of suits for breach of collective bargaining contracts. The text of this section appears *infra* at pages 23-24, Appendix.

(2) The "cooling off" provisions of Section 8, 29 U. S. C. § 158, requiring sixty days' notice and delay before termination of a collective bargaining agreement. The text of this section appears *infra* at pages 24-25, Appendix.

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1. As required by the rules of the Court of Appeals for the Third Circuit, the record was printed as an Appendix to petitioner's brief in that court and the pages numbered "1a, 2a", etc. In this Petition, record references are cited simply as R-1, R-2, etc., omitting the "a", but the references are to the indicated numbered pages in the Appendix-record.

Questions Presented.

This employer's suit under Section 301 of the Taft-Hartley Act was based on a collective bargaining agreement (R-6) which included a "no-strike" clause (R-9), an arbitration clause (R-14), and the following provision (R-16):

> "This agreement shall be in effect from August 15, 1947 to August 15, 1948 and thereafter from year to year, provided, however, that either party may terminate the same on not less than sixty (60) days written notice given to the other prior to the anniversary date.
>
> "However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed."

The union gave sixty days' notice of termination [2] on June 1, 1948. Negotiations began on June 15, 1948. The terms of the new contract had not been agreed upon by August 15, 1948. Five days later, despite the above quoted provision of the contract, the union broke off negotiations and went on strike. The employer filed this suit for damages for breach of contract on October 26, 1948. The lower courts dismissed it (R-163, R-293) without discussing any provision of the Taft-Hartley Act.

The questions presented are:

1. Whether, in a breach-of-contract action under Section 301 of the Taft-Hartley Act, between parties admittedly subject to the federal regulatory scheme of that statute, the lower federal courts can dismiss the suit solely on the basis

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2. In both courts below, petitioner urged that the union's letter of June 1, 1948 was not effective as notice of termination. Although it still believes those courts' adverse rulings on this point are also erroneous, petitioner does not bring that question to this Court.

of un-cited state decisional law allegedly permitting termination-at-will of a collective bargaining agreement of indefinite duration, rather than applying the contrary provisions of the federal statute and the contract itself.

2. Whether the lower federal courts can, in the same manner, absolve the union from liability under the Taft-Hartley Act for breach of contract when it goes on strike relying on its own unilateral interpretation of the above quoted provision of the contract, in violation of another provision requiring that "differences arising . . . in the interpretation of this agreement" shall be submitted to arbitration.

Statement of the Case.

This action was instituted by petitioner under Section 301 of the Taft-Hartley Act (29 U. S. C. § 185) to recover damages caused by respondents' breach of a labor relations contract (R-6) which had been negotiated by collective bargaining.

The facts which resulted in this suit for damages may be summarized as follows:

Petitioner operates a paper mill at Bristol, Pennsylvania, and is engaged in interstate commerce (R-29). Respondents are unincorporated labor organizations and are the collective bargaining representative of petitioner's employees (R-29).

On August 13, 1947, petitioner and respondents entered into an agreement governing wages and working conditions for the period beginning August 15, 1947 (R-6).

The agreement included a "no-strike" clause (R-9), which appears *infra* at page 25, Appendix, and an arbitration clause (R-14), which appears *infra* at pages 26-27, Appendix.

The term covered by the agreement was stated in Section 15 thereof (R-16), providing as follows:

"This agreement shall be in effect from August 15, 1947 to August 15, 1948 and thereafter from year to year, provided, however, that either party may terminate the same on not less than sixty (60) days written notice given to the other prior to the anniversary date.

"However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed."

By letter dated June 1, 1948 (R-17), the Regional Director of the union requested the company to designate a date and place for a meeting "for the purpose of discussing changes in the contract for the coming year". By letter dated June 7, 1948 (R-18), the company suggested June 15, 1948 as the date for the requested meeting.

Negotiations were carried on during the course of several meetings (R-220, R-227, R-235, R-212, R-248, R-254, R-171) held between June 15, 1948 and August 20, 1948, the date of the strike (R-32).

At the meeting on August 16, 1948, the following exchange took place (R-250) between the union's International Representative and counsel for the company:

"We gave you a list of proposals; we did not say this was the ultimatum; we were willing to bargain, explained Mr. Carrella. You did not even give us a retroactive agreement. The people brought up that question—if the Company is willing to negotiate, why do they not give us a retroactive agreement? This is the first time this has been mentioned, responded Mr. Beechwood. I believe if it goes beyond the expiration date we should have an agreement on retroactivity, stated Mr. Carrella. Mr. Beechwood quoted from the Contract, 'This agreement shall be in effect from August 15, 1947, to August 15, 1948, and thereafter from year to year,' with special emphasis on, 'However,

should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed.' You drafted this and insisted on its being put into the Contract, and it's your Contract, said Mr. Beechwood. When we gave you the sixty-day notice, that means we are terminating the Contract, said Mr. Carrella."

At the meeting on August 17, 1948, the company negotiators offered to increase wages five cents per hour and to pay time-and-one-half for Saturday and double time for Sunday (R-257). The union negotiators agreed to report that offer to the membership and to ascertain their attitude with respect to it (R-258).

At the meeting on August 20, 1948, the International Representative advised the company that the membership had rejected the company's offer. He then stated, "that means if we cannot get together and settle today, the plant will be shut down Monday" (R-172).

No agreement was reached. The employees went on strike that same day, and the mill was not in production from August 20, 1948 to November 20, 1948 (R-32). The International Union's official publication described it as a "perfectly paralyzed plant" (R-179).

Finally (R-166), the union accepted the company's continuing offer of a five cents per hour wage increase and payment of time-and-one-half for Saturday and double time for Sunday, rejection of which same offer had caused the strike three months earlier (R-172).

The company's original Complaint was filed in the District Court on October 26, 1948, and its Amended Complaint was filed on December 20, 1948 (R-1). The union's Amended Motion to Dismiss was filed December 24, 1948 (R-1) and was denied with opinion (R-24) on March 11, 1949.

The case came on for trial on November 6, 1950 (R-2). After conclusion of testimony directed solely to the issue of liability (R-157), the trial judge granted the union's Motion

to Dismiss (R-158). Judgment was entered accordingly (R-289).

The trial judge filed no written opinion. He explained his ruling orally (R-164-165). The now relevant portions of the judge's statement are as follows:

1. With respect to the first of the "Questions Presented" to this Court, *supra* page 3, the trial judge said (R-165):

> "The third question, it seems to me, which is presented, is what interpretation is to be given to the second paragraph of section 15 making reference to that section which provides: 'However should there be delay in negotiating a new agreement this agreement shall remain in full force and effect until such time as the new agreement is completed.' This Court rules with respect to the construction and interpretation of that section that the provision means that not all of the contract, not in its complete fullness, is it in effect: it means that the provisions of the agreement are to remain in full force and effect after termination until the parties refuse either to negotiate in good faith, or meet in a deadlock or an impasse. As I say, only those sections of the contract are in force which would permit, it seems to me, under a reasonable interpretation, the factory to operate and to function as it did in the past."

2. With respect to the second of the "Questions Presented" to this Court, *supra* page 4, the trial judge said (R-165):

> "Those are the sections—and I also rule, number 5, I guess it is—that the reference in the agreement, in the contract, to the interpretation of the agreement as being part and parcel of a duty on both parties to construe the phrase 'any difficulty arising in interpretation of the agreement' does not within its orbit cover the question which eventually came to this Court, and whether or not there was apparent controversy between

the parties as to the date did not mean that it was subject to review under the grievance provision with respect to arbitration."

The Court of Appeals for the Third Circuit (Judges Hastie, Biggs and Staley) affirmed the judgment (R-297). That court's opinion (R-293) is reported at 191 F. 2d 252. It describes this collective bargaining agreement in the following terms (R-293):

> "The contract was a comprehensive and detailed agreement covering the field of employment and labor relations at plaintiff's plant. It contained an express covenant not to strike. It was executed and to be performed in Pennsylvania and we construe it in accordance with Pennsylvania law."[3]

With respect to the first of the "Questions Presented" to this Court, the Court of Appeals said (R-295-296):

> "It is also necessary to consider the meaning and effect of the language of the second paragraph of Section 15 of the contract that 'should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed'. The language follows immediately after the provision for 60 days notice of termination on a contract anniversary. It is obviously directed at the avoidance of a no contract situation where pending negotiation of a new contract continues beyond the notified termination of the old. It is phrased only in terms of a successful negotiation. It leaves to inference the result of unsuccessful negotiation.
>
> "But the correct inference is not hard to draw. Negotiation is set up as a factor suspending or postponing the normal effect of notice of termination. The

3. Petitioner still believes the lower courts' purported interpretations of Pennsylvania law are erroneous, but does not bring any question of state law to this Court.

end of negotiation, whether success or failure, marks the end of this postponement.

"It may not always be easy to say when negotiations for a new contract have failed and ended. But no such difficulty exists here. Before the strike was called both parties had recognized that further discussions would be futile. They had broken off their long continued meetings with the understanding that they would not meet again. In recognition of the impasse and its likely consequences, they had discussed and arranged for maintenance essential to plant security in the event of a strike. It is a fact clear on this record that negotiations toward a new contract had failed and come to an end.

"In summary, the contract here required 60 days notice of termination, and appropriate notice was given. But, also in accordance with the contract, termination was suspended by negotiations toward a new contract. These failed and ended. The old contract thereupon terminated pursuant to the permitted election already made manifest by timely notice as provided in the document itself. The obligation not to strike, like the other obligations of the contract ceased to exist.[2] For this reason the complaint was properly dismissed. Other points urged need not be considered."

In a footnote, the Court of Appeals added:

"2. We have examined the several authorities cited and argued by plaintiff concerning obligations not to strike. They do not help us decide what Section 15 of this contract means. And that is the decisive inquiry here."

The Court of Appeals' opinion made no mention of any section of the Taft-Hartley Act.[4] In its Petition for Re-

4. Except of course the mere statement that the action had been brought under Section 301.

hearing (R-301) the company asked the Court of Appeals to at least consider and discuss the applicable provisions of that statute, to consider conflicting decisions of this Court and of other Courts of Appeals, to reconsider its interpretation of the contract itself, and to at least cite the Pennsylvania decisions on which it purported to rely. The Petition for Rehearing was denied without oral argument thereon and without opinion (R-315).

Specification of Errors to Be Urged.

The Court of Appeals for the Third Circuit erred:

1. In holding that the labor relations contract, admittedly in effect on August 20, 1948, could be terminated by the union at will, despite contrary provisions of the federal statute and the contract itself.

2. In failing to hold that the dispute as to the interpretation and effect of Section 15 of the contract was subject to arbitration.

3. In holding that the union did not breach the "no-strike" and arbitration provisions of the contract by going on strike.

4. In ignoring the applicable federal statute and applicable decisions of this Court and of other Courts of Appeals.

5. In affirming the judgment of the District Court.

Reasons for Granting the Writ.

1. Without even discussing the Taft-Hartley Act, the Court of Appeals has decided questions of nation-wide application and of the highest practical importance to large numbers of employers, employees, and labor unions engaged in basic industries in interstate commerce. In so doing, the lower court re-wrote the contract itself and purported to rely on un-cited state decisional law, ignoring applicable sections of the federal statute and this Court's de-

cision in *International Union v. O'Brien*, 339 U. S. 454. The lower court has thus effectively nullified federal statutory provisions designed to promote stability in labor relations and to prevent interruptions in the flow of interstate commerce. The important questions of federal labor relations law raised by the case justify review and decision by this Court.

2. Although it failed to mention Section 8(d) of the Taft-Hartley Act, the Court of Appeals' decision has the effect of holding that section inapplicable to collective bargaining agreements of indefinite duration. This conflicts with the terms of the statute itself, as well as with the decision of the Court of Appeals for the District of Columbia Circuit (Judges Sweeney, Clark and Miller) in similar circumstances in *Boeing Airplane Co. v. National Labor Relations Board*, 174 F. 2d 988, 990-991, which court's interpretation was also concurred in by the Court of Appeals for the Ninth Circuit (Judges Healy, Bone and Hastie) in *Boeing Airplane Co. v. Aeronautical Industrial District Lodge No. 751*, 188 F. 2d 356, 357.

3. By refusing to recognize that this strike violated the arbitration and "no-strike" clauses and thereby gave the employer a cause of action under Section 301 of the Taft-Hartley Act, the Court of Appeals for the Third Circuit reached a conclusion conflicting with that reached by the Court of Appeals for the Second Circuit (Judges Clark, L. Hand and Chase) in an analogous situation in *Shirley-Herman Co. v. International Hod Carriers*, 182 F. 2d 806, and by the Court of Appeals for the Fourth Circuit (Judges Parker, Soper and Dobie) in *International Union v. Colonial Hardwood Flooring Co.*, 168 F. 2d 33, 35.

4. Both the District Court and the Court of Appeals refused to even consider the important federal statutory issues implicit in this case. They thereby nullified federal statutory rights without discussion or citation of a single section of the federal statute or a single federal court de-

cision. The result is in conflict with applicable decisions of this Court and of other Court of Appeals. The rule adopted would permit arbitrary, unilateral strike or lockout action, despite federal statutory provisions enacted to protect interstate commerce from such disorders and despite explicit contract provisions adopted to further that same objective.

Such deviations from sound judicial standards call for the exercise of this Court's supervisory powers, so that the important federal issues involved may be correctly and authoritatively decided for the guidance of all employers, employees, and labor unions engaged in interstate commerce.

The foregoing Reasons are discussed *seriatim* below.

1. Sections 301 and 8(d) are key provisions of the Taft-Hartley Act deliberately enacted by the Congress after the fullest consideration. They are designed to promote stability in labor relations and thus prevent interruptions in the flow of interstate commerce. That objective has been recognized since the very beginning as the constitutional foundation for the whole federal regulatory scheme. *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1.

"It is elementary that what Congress constitutionally has given, the state may not constitutionally take away. *Hill v. Florida*, 325 U. S. 538." *International Union U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245, 254. By these two sections of the Taft-Hartley Act, the Congress has given employers and employees in interstate commerce the right to notice and delay before termination of collective bargaining contracts of indefinite duration (Section 8(d)), fortified by a cause of action for damages for breach of such contracts (Section 301).

It is perfectly clear from a mere reading of the opinion of the Court of Appeals in this case that that Court did not give either section any consideration. Indeed the court

frankly stated that it was applying only state law, which is a concession that it did not apply the federal law.

This Court has already held one state statute unconstitutional because in conflict with Section 8(d) of the federal law, although the invalidated state provisions would have provided *greater* protection against interruption of interstate commerce than does Section 8(d). *International Union v. O'Brien*, 339 U. S. 454. The alleged but uncited state decisional law applied by the Court of Appeals in this case *nullifies* the safeguards of the federal statute. A state statute, regulation or order to that effect could not prevail in the face of the *O'Brien* case and others [5] which it followed. It would be highly ironical if the federal scheme could nevertheless be displaced by the contrary decisional law of the state. Indeed, this Court has specifically held that employees' federal rights cannot be confined by the various states' notions as to the wisdom of federal policy, "whether those [state] limits be defined by statute or by the judicial organ of the state". *American Federation of Labor v. Swing*, 312 U. S. 321, 326.

In every instance up to this time in which there has been a substantial claim of conflict between state and federal law in this field, this Court has reviewed the case to

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5. *Hill v. Florida*, 325 U. S. 538; *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 667; *LaCrosse Tel. Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18; *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, 338 U. S. 953. See also *National Labor Relations Board v. Kalamazoo Stationery Company*, 160 F. 2d 465, certiorari denied 332 U. S. 762.

Even those cases which have upheld particular state statutes or orders have reaffirmed the rule that if there is a conflict the federal law's supremacy must be maintained. *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740; *International Union U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245; *Algoma Plywood and Veneer Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301.

make certain that the supremacy of the federal law would be maintained. It should do so here.[6]

In this connection, this Court recently pointed out that in writing this very statute, "Congress demonstrated that it knew how to cede jurisdiction to the states." *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383, 397, and notes 23-25. Similarly, in another area where federal and state laws have conflicted, the Court only yesterday emphasized that if such issues are left to the "confused and conflicting medley" of state procedures, federal rights "would be contingent upon application of myriad discordant rules by a thousand judges scattered over the land". *Bindczyck v. Finucane*, — U. S. —, 20 Law Week 4019.

The same kind of situation will prevail in this important field of law if federal courts throughout the country can treat these federal statutory rights according to their own notions of the decisional law of the various states. In this field of the economy, such a situation would be intolerable. There can be no doubt that in the prevention of disastrous strikes and lock-outs in interstate commerce there must be a uniform federal rule. And the Congress has enacted that rule in Sections 301 and 8(d), which the Court of Appeals admittedly ignored in favor of state decisional law.

The parties here recognized and sought to further the federal policy of uninterrupted production. Section 15 of the contract (R-16) was designed to insure stability during the most precarious period—the period when a new contract was to be negotiated.[7] It provides in plain lan-

6. The fact that the judgment here challenged is not from a state court but from a federal appellate court makes review even more imperative. State courts pass on such issues infrequently, but the federal district courts and Courts of Appeals are constantly interpreting and applying this statute.

7. It has been well said that "The degree of stability in labor relations gained through a collective bargaining

guage [8] that "should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed." This provision was inserted in the contract at the request of the union (R-250). It reflects the union's desire to hold on to the benefits of their contract while attempting to push them still further. It also reflects the employer's natural desire to avoid a breakdown in production. The public's interest in those objectives is similarly reflected in Sections 8(d) and 301 of the statute.

Nevertheless the lower courts, with a shocking disregard of all these factors, have held in effect that either party may break off negotiations whenever satisfied that further discussions would be futile. This is not only a perversion of this plain contract provision, *cf. Colgate-Palmolive Peet Co. v. National Labor Relations Board*, 338

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contract depends to a great extent on the provisions made for the duration, termination, and amendment of the contract." COLLECTIVE BARGAINING NEGOTIATIONS AND CONTRACTS (Bureau of National Affairs) 36:1.

Further, "A certain *minimum level* of stability in terms of contract termination or modification is imposed on collective agreements by the provisions of the Taft Act." *Ibid.* (Emphasis added.)

8. This clause, as written by the parties, is fairly typical of the approach to this problem reflected in current collective bargaining agreements. Such contracts "often provide for their temporary extension, if negotiations for a new agreement are prolonged after the expiration date of the old agreement". 5 C. C. H. Labor Law Reporter § 51,827. Moreover, "Contracts may be extended temporarily for (1) a reasonable length of time, or (2) a specified period, or (3) until a new agreement is negotiated." *Ibid.*

It is thus made clear that parties to these agreements negotiate the exact type of extension clause which they desire. That is precisely what the parties did in this case. It is crystal clear from the lower courts' own words that they did violence to this crucial provision.

U. S. 355, 363, but also a complete negation and nullification of the statute.

The wide importance of the lower courts' decision in this respect is emphasized by the fact that contracts in essential industries uniformly contain some such provision governing the critical period of negotiation. See, for example, General Motors contract, 5 C. C. H. Labor Law Reporter § 53,101.75; Carnegie Illinois Steel Corp. contract, *Id.*, § 53,110.80; Brooklyn Union Gas Co contract, *Id.*, § 53,120.39; Goodrich Rubber Co. contract, *Id.*, § 53,140.110; Consolidated Edison Co. contract, *Id.*, § 53,150.46; Lever Brothers Co. contract, *Id.*, § 53,170.149; Johnson & Johnson Corp. contract, *Id.*, § 53,180.62. Other examples of similar clauses are cited in the margin.[9]

The universal use of such clauses illustrates the nation-wide importance of a proper application of these provisions and of Sections 8(d) and 301 in order to prevent interruptions to interstate commerce by strikes or lockouts during critical negotiation periods.

The contract in this case was "made in accordance with the letter and the spirit of the statute". *Colgate-Palmolive-Peet Co. v. National Labor Relations Board*, 338 U. S. 355, 363. Indeed, under Section 15, both parties undertook heavier obligations than the statute requires. The Court of Appeals cannot be permitted to "reform it to con-

9. See also American Tobacco Co. contract, UNION CONTRACTS AND COLLECTIVE BARGAINING PRACTICE (Prentice-Hall) § 56,043.35; American Crystal Sugar Co. contract, Id., § 56,051.44-46; George A. Hormel & Co. contract, Id., § 56,071.46; National Bituminous Coal Wage Agreement, Id., § 56,161.44; Dewey & Almy Chemical Co. contract, Id., § 56,212.44; Sinclair Refining Co. contract, Id., § 56,228.4; Kaiser-Frazer contract, Id., § 56,754.93; International Harvester Co. contract, Id., § 56,908.8; Libby-Owens-Ford Glass Co. contract, Id., § 56,945.67; Radio Corporation of America contract, Id., § 56,965.71. And see other contracts in COLLECTIVE BARGAINING NEGOTIATIONS AND CONTRACTS (Bureau of National Affairs) 23:1-24:706.

form to the [court's] idea of policy", *ibid*, or state law, and thereby defeat the purpose of both the federal statute and the contract.

The lower courts have failed to recognize the importance of this issue and have ignored the high national policy deliberately enacted to govern it. If the decision in this case is permitted to stand, the safeguards written into the law by Sections 301 and 8(d) will be nullified and the public interest which underlies the entire federal statutory scheme will be jeopardized. Moreover, the decision below is patently inconsistent with the many decisions of this Court from *Hill v. Florida*, 325 U. S. 538 to *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383.

This Court should remedy this situation by reviewing and reversing the judgment below.[10]

2. The Court of Appeals, by ignoring Section 8(d), actually held it inapplicable to the contract admittedly in effect between the parties on August 20, 1948, the date of the strike, and refused to enforce the employer's cause of action under Section 301.

The lower court held that when "negotiations toward a new contract . . . failed and ended . . . the old contract *thereupon* terminated" (emphasis added). 191 F. 2d 252 at 254. Obviously, the court thus held that *some* contract was in effect at the very moment the union went on strike. Nevertheless, it also held the strike did not breach that contract. In addition to being erroneous for reasons already discussed, this result conflicts with that reached on a similar set of facts by the Court of Appeals for the District of Columbia Circuit, which was later adopted by the Court of Appeals for the Ninth Circuit.

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10. This Court has always zealously guarded the federal rights of both employers and employees under the federal scheme of the Employers Liability Act, 45 U. S. C. §§ 51 et seq. The equally important regulatory plan governing collective bargaining and labor relations should be similarly treated.

Boeing Airplane Co. v. N. L. R. B., 174 F. 2d 988, involved a contract which by its terms was to be in effect until March 16, 1947 "and thereafter until a new agreement has been reached by the parties either through negotiation or arbitration". Changes were proposed by the company at various times beginning in October of 1946. Several series of negotiations had not produced a new agreement by April 22, 1948, more than a year after the originally specified termination date. The union went on strike on April 22, 1948, and the Court of Appeals held that the strike violated both the "no-strike" clause of the contract and Section 8(d) of the Act. It held that the above quoted provision extending the contract had kept it in effect for more than a year and that the strike breached the contract rather than terminating it, as held by the Court of Appeals in this case.

What the Court of Appeals for the District of Columbia said in the *Boeing* case is strikingly appropriate here:

> "We agree with the principle of law that a contract of indeterminate duration may become terminable by unilateral action on the part of either party after a reasonable lapse of time. In enacting Section 8(d) Congress specified what the reasonable notice of termination would be, namely, sixty days. In this case the Company was allowed no more than twenty-four hours to consider a proposal containing demands which were far-reaching in their effect upon the Company. The Company did not accept the proposal and the strike occurred. This is not in compliance with the no-strike clause of the contract and, even assuming the existence of an interim contract, it was not sufficient notice under either the 1946 contract or the so-called interim contract.
>
> "We are of the view that the Union violated both Section 8(d) of the National Labor Relations Act, as amended, and the no-strike clause of its own contract. . . ." 174 F. 2d at 991.

It is of course not necessary to hold that in the circumstances of this case the statute required notice and delay for any *particular* additional period. The important point is that where a contract of indefinite duration is in effect the statute *applies* and requires *at least* reasonable notice and delay before strike or lockout action is taken.

The Court of Appeals for the Ninth Circuit also adopted this view in a subsequent suit by the Boeing Company under Section 301. *Boeing Airplane Company v. Aeronautical Industrial Lodge No. 751,* 188 F. 2d 356 at 357. That Court agreed with the District Judge that "the union had been guilty of a material breach" of the contract.[11] Both Courts of Appeals therefore reached a result which conflicts with the decision of the Court of Appeals for the Third Circuit in this case.

It is also significant that the "futility" approach adopted by the Court of Appeals in this case was expressly rejected by the Court of Appeals for the District of Columbia Circuit in the *Boeing* case. The National Labor Relations Board had stated, 80 N. L. R. B. 447, 450, that Section 8(d) did not apply to interim contracts and that "no useful purpose would be served" by requiring the union to comply with the notice and delay provisions of that section. This view of Section 8(d) was summarily rejected by the Court of Appeals for the District of Columbia Circuit, 174 F. 2d 988, 990-991, and by the Court of Appeals for the Ninth Circuit, 188 F. 2d 356, 357.

On facts which are indistinguishable, the Court of Appeals in this case has revived this twice-rejected theory of non-application of Section 8(d) and the irresponsible view that either party can break off negotiations with impunity whenever satisfied that further discussions would be "futile". They have added the wholly novel theory that as the

11. Recovery was denied only because the courts held the employer had rescinded the contract on the day following the union's breach and had thereby lost its right to claim damages.

union opens the door to abandon the conference room in favor of the picket line it automatically terminates the contract and thus avoids liability for its breach. This flies in the face of the statute and the cited contrary decisions.

The contract in this case deliberately provided that where a new agreement had not been reached by the originally specified termination date, the original sixty day termination notice would *not* be given effect but instead the contract continued in force until a new agreement had been completed. Since the contract did continue in force, its "no-strike" clause and arbitration clause continued to bind the parties, and this strike was a breach of the contract as well as Section 8(d), which in terms applies to contracts of indefinite duration. Under the *Boeing* decisions, this Union's breach was actionable under Section 301 and the lower court's decision to the contrary is erroneous.

The conflict on this point requires action by this Court.

3. Section 13 of this contract (R-14) requires *inter alia* that all differences arising "in the interpretation of this agreement" shall be submitted to arbitration. The Court of Appeals did not mention this clause in its opinion. But holding, as it did, that the union was free to strike at will, the court must have considered this arbitration clause inapplicable to the dispute as to whether Section 15 (R-16) had continued the contract in force. The union took the position that Section 15 had no such effect. The company negotiators expressed the opposite view (R-250). If this was not a "dispute in the interpretation of this agreement", it is difficult to imagine one. Nevertheless, the Court of Appeals found no breach of contract in the union's strike without invoking arbitration.[12]

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12. Obviously the preliminary procedures specified in Section 13 (R-14) for the processing of "in-plant" grievances were not intended to and would not apply to this type of dispute. The very highest levels of both union and company officials were *already* involved. All that remained to be done was the appointment of the arbitrators as re-

This result conflicts with that reached by two other Courts of Appeals which have decided similar questions in suits under Section 301.

In *Shirley-Herman Co. v. International Hod Carriers*, 182 F. 2d 806, the Court of Appeals for the Second Circuit held a strike in violation of an arbitration clause actionable under Section 301. There, as here, the union had "promised that regardless of the nature of a dispute which might arise, it would not cease work but would keep on the job until the dispute was settled by the machinery provided for in the contract". 182 F. 2d at 810. The decision of the court below in this case cannot be squared with that of the court in the *Shirley-Herman* case.

Similarly, in *International Union v. Colonial Hardwood Flooring Co.*, 168 F. 2d 33, 35, the Court of Appeals for the Fourth Circuit held that an arbitration clause to the same effect as that involved in this case covered the controversies made subject to the grievance procedure. That Court refused to stay a suit against a union under Section 301 based on a strike in violation of the arbitration clause. If the Court of Appeals for the Third Circuit had shared the Fourth Circuit's view, it could not have approved the dismissal of this suit.

The conflict on this point also requires action by this Court.

4. The opinion of the Court of Appeals in this case is a remarkable document. This suit involved rights and responsibilities under a much-litigated federal statute. The applicable sections of that statute were briefed and argued before it. Federal decisions in other cases were discussed. Nevertheless, the lower court dismissed the action without referring to or interpreting either section of the statute and without citing a single decision of this Court or any other federal court.

---

quired by the last two paragraphs of Section 13. The ease with which this solution could have been put into effect emphasizes the arbitrary nature of the union's strike action.

Moreover, despite Sections 301 and 8(d) of the statute, and despite a contract containing a "no-strike" clause (R-9), an arbitration clause (R-14), and a provision that the contract continued in effect until a new agreement was completed (R-16), the Court found no breach of contract in a strike which turned the employer's mill into a "perfectly paralyzed plant" (R-179) for three months.

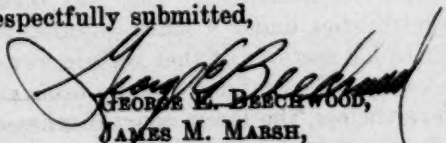
Its decision is based on the novel theory that the strike broke the contract but did not breach it. The court held that so long as the union continued to accept the benefits of the contract while trying to push them still further, the contract was alive, but as soon as the union gave up trying to improve it, the contract was dead.

This is a most unusual decision in a field of law vitally important to the economic well-being of the country. It therefore creates an occasion appropriate for the exercise of this Court's power and duty to supervise the lower federal courts. The function of those courts is not performed by approving lawless conduct by any segment of society. This Court should reaffirm the rule of law in this constantly recurring type of controversy.

Conclusion.

For all the foregoing reasons, Petitioner prays that a writ of certiorari issue to the end that the judgment of the Court of Appeals for the Third Circuit in this cause may be reviewed and reversed.

Respectfully submitted,



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APPENDIX.

Text of Statute Involved.

Section 301 of the Taft-Hartley Act, 61 Stat. 136, 29 U. S. C. (Supp. III) § 185, provides as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Section 8 of the statute, 129 U. S. C. § 158, provides in pertinent part as follows:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of Section 159(a) of this title;

* * *

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall

also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later;

* * *"

Provisions of the Contract.

"SECTION 4. INTERRUPTION OF WORK.

"There shall be no strikes, walkouts, lockouts, slowdowns or work stoppage as a result of any grievance or dispute until all other means and every effort have been exhausted to adjust them through the regu-

lar procedure set up by this agreement and in no case without the approval of the International Officers of the Union." (R-9)

"SECTION 13. GRIEVANCES—PROCEDURE—ARBITRATION.

"All grievances, complaints or any other differences arising in the mill or in the interpretation of this agreement, between the members of the Union and the Company, shall be submitted for adjustment in the following manner:

When a grievance or complaint arises in a department of the mill, the member or members affected shall, together with the Department Steward, take the matter up with the Department Superintendent. The grievance shall be submitted in writing within fifteen (15) days after the occurrence thereof.

Any adjustment of any and all grievances, whether old or new shall not, under any circumstances, antedate fifteen (15) days prior to the date on which the grievance is delivered to the Department Superintendent.

If in this way, the complaint or grievance has not been satisfactorily adjusted, it shall then be submitted to the entire adjustment Committee, comprised of five (5) members, who will take it up with the Personnel Manager.

If a satisfactory adjustment is not reached by this procedure, the Adjustment Committee and an Official of the International Union shall negotiate for a settlement of the matter with the general Manager or his representative and Personnel Manager.

"Upon failure of these negotiations to bring about a satisfactory settlement, the grievance shall then be referred to a Board of Arbitration consisting of three

(3) members. One member shall be selected by the Company, one by the Union, and the third shall be selected by the first two from a panel of Arbitrators submitted by the American Arbitration Association. Decisions by the Board of Arbitration shall be final and binding upon both parties. Expenses of Arbitration to be borne equally by the Company and the Union.

"The Company agrees to pay members of any committee at their regular rate of pay while meeting with the Company on adjustments or negotiations, such pay not to exceed an average of four (4) hours per week." (R-14, R-15)

"SECTION 15. TERMS OF AGREEMENT.

"This agreement shall be in effect from August 15, 1947 to August 15, 1948 and thereafter from year to year, provided, however, that either party may terminate the same on not less than sixty (60) days written notice given to the other prior to the anniversary date.

"However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed." (R-16)

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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1951. No. 480.

PATERSON PARCHMENT PAPER COMPANY, a Corporation,
Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, and INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, BRISTOL LOCAL No. 500, Unincorporated Associations,
Respondents.

BRIEF FOR THE RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

OPINIONS BELOW.

The ruling of the District Court (164a, 165a) granting the respondents' motion for a directed verdict is not reported.

The opinion of the Court of Appeals, affirming the District Court's direction of a verdict for the respondents, is reported at 191 F. 2d 252.

JURISDICTION.

The judgment of the Court of Appeals was entered on August 1, 1951 (R. 297a). On September 18, 1951, the Court of Appeals denied the petitioner's Petition for a Rehearing (315a).

The jurisdiction of this Court is involved under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

Whether a collective bargaining agreement, providing that "should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed," continues in effect, by reason of this clause, after the expiration date of the agreement and after negotiations between the parties for a new agreement have reached a deadlock.

Whether a contractual provision providing that there will be no strikes as a result of any grievance until the arbitration procedure has been exhausted is violated by a strike after the termination of the contract, and after negotiations for a new contract have reached a deadlock.

Whether the arbitration provision of a collective bargaining agreement providing that "grievances, complaints or any other differences arising in the mill or in the interpretation of this agreement" shall be arbitrated requires arbitration of a dispute involving the life of that agreement, upon which issue the company started suit in this matter.

STATEMENT OF THE CASE.

This is an action by petitioner under Section 301 of the Labor Management Relations Act of 1947, 61 Stat. 136, 28 U. S. C. 151 et seq. (Supp. 1950).

Petitioner is a corporation operating a paper mill at Bristol, Pa. Petitioner's employees are represented for purposes of collective bargaining by the respondent, Local 500 of the International Brotherhood of Papermakers, A. F. of L.

Petitioner and the respondent local were signatories to a collective bargaining agreement entered into on August 13, 1947 (6-16a). This agreement is also signed by the Regional Director of the respondent International Brotherhood of Papermakers, the parent union of respondent Local 500.

This agreement contains clauses, common to all labor agreements, providing for wages, hours of work, vacations, holidays, arbitration of grievances, and other such familiar items. Section 15 of the agreement, the clause around which much of the controversy here stems, provides as follows (16a):

> "This agreement shall be in effect from August 15, 1947 to August 15, 1948 and thereafter from year to year, provided, however, that either party may terminate the same on not less than sixty (60) days written notice given to the other prior to the anniversary date.
>
> However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed."

On June 1, 1948, in accordance with this clause, the Regional Director of the International wrote to the company (17a), notifying the company that Local 500 desired

to terminate the agreement and to negotiate a new contract for the coming year. The company replied to this letter (18a).

As a result of this correspondence, the parties met in an effort to negotiate a new contract (40a, 41a), the first meeting being held on July 8, 1948 (41a). Subsequent meetings were held (59a). At the first meeting on July 8, 1948, the respondent submitted its proposed entire new contract (41a, 187a-198a). At the fourth negotiation meeting on August 12, 1948, the company submitted its proposed entire new contract (51a, 52a, 199a-209a). The threat of a strike by the union was constantly present throughout these meetings and the company was aware of such a possibility. (The minutes of these negotiation meetings, as prepared by the company, were introduced into evidence by the respondents (212a-258a); they constitute a record of the course of the negotiations for a new contract.)

The negotiations continued through the months of July and August. At the meeting of August 17, 1948, the company made its final offer (257a). The local union, on August 20, 1948, voted to reject the offer and to go on strike (83a, 84a). The parties were at this stage obviously deadlocked, and an impasse in negotiations had been reached (68a, 76a, 89a, 90a).

The company was aware of the imminence of the strike even before this August 20 vote, because prior to August 20, 1948, the company had covered material which was used daily by the employees (69a), and had ordered that machines normally used be covered (85a, 86a). Further, even before the strike vote had been taken by the local union, the company and the union had discussed various arrangements as to the operation of the boiler room, the unloading of coal, and other maintenance operations, which were to continue during the imminent strike (70a, 72a).

On August 20, 1948, the employees went on strike (32a). The company, on October 20, 1948, filed its original complaint in the United States District Court for the Eastern

District of Pennsylvania. Its Amended Complaint was filed on December 20, 1948 (1a). The respondents' Amended Motion to Dismiss was filed December 24, 1948, and was denied on March 11, 1949 (1a).

The case was tried before the Honorable J. Cullen Ganey and a jury beginning November 6, 1950. On November 12, 1950, the trial judge directed a verdict for the defendants on the issue of liability (158a). Judgment was entered accordingly (289a).

The trial judge filed no written opinion. He explained his ruling orally (164a-165a).

The Court of Appeals for the Third Circuit (Judges Hastie, Biggs, and Staley) affirmed the judgment (297a). The Court's opinion was filed by Judge Hastie (293a-296a).

On September 7, 1951, the company filed a Petition for Rehearing (301a-314a). The Petition for Rehearing was denied (315a).

ARGUMENT.

I. SUMMARY OF ARGUMENT TO BE PRESENTED.

The decision of the Court of Appeals for the Third Circuit, affirming the direction of a verdict for the respondents, is not of such general importance as to warrant the granting of a writ of certiorari. However, that decision is clearly right; and the respondents will attempt to establish the correctness of that decision, and the fallacies in the petitioner's argument for the granting of a writ of certiorari. The respondents here will make no effort to raise every issue and argument that they have raised before; they will only attempt to answer the arguments raised in the Petition for Writ of Certiorari.

The petitioner does not bring to this Court (page 3, Petition for Writ of Certiorari) the question of the effect of the union's letter of June 1, 1948 (17a). Thus we are bound by the rulings of both the District Court and the Court of Appeals that this letter was an effective notice of termination (164a, 294a-295a), and the contract thus terminated as of its expiration date, August 15, 1948.

The error which the petitioner thus raises is the lower courts' interpretation of the second paragraph of Section 15 of the Collective Bargaining Agreement (16a). That paragraph is obviously directed at the negotiation period subsequent to the termination of the contract. When negotiations have been unsuccessfully completed, the parties having clearly reached a deadlock and an impasse, this clause cannot indefinitely continue the contract. The contract had been terminated and the union had the right to strike after the unsuccessful completion of negotiations.

Section 8(d) of the Labor-Management Relations Act of 1947 (29 U. S. C. 158 (d) Supp. 1950), has no application to this proceeding. That section provides that the duty to bargain collectively shall include the duty of sending certain notices in order to terminate or modify a collective bargaining agreement (Petition for Writ of Certiorari, pages 24-25). The failure on the part of a union to send such notices constitutes an unfair labor practice. The respondents have complied with this provision; a prosecution for any alleged violation of the provision is within the exclusive jurisdiction of the National Labor Relations Board.

The petitioners apparently attempt to argue that once the negotiations here between these parties continued past August 15, 1948, the expiration date of the contract, the respondents, in accordance with Section 8 (d), were required to give another sixty-day notice of termination to the petitioner in order to terminate the contract. There is absolutely no basis for such an argument in the terminology or the legislative history of Section 8 (d). Further, there is absolutely no conflict between the decision of the Court

of Appeals in this case and the decisions of other Courts of Appeals. To adopt the petitioner's argument is not only to do violence to the contract between the parties, the legislative history, and the statutory language, but also is to force every union to strike exactly on the expiration date of its contract for fear that any negotiation beyond that termination date may require it to send another sixty-day notice.

The strike was not a violation of Section 4 and Section 13 of this contract, the no-strike clause and the arbitration clause (9a and 14a and Petition for Writ of Certiorari, pages 25-27). The no-strike clause (19a) prohibited strikes until the arbitration procedure had been exhausted. The dispute over wages was not subject to arbitration (14a), and thus Section 4, the no-strike clause (9a) was not violated.

The petitioners apparently argue that the question of the effect of Section 15 on the continuation of the contract should have been submitted to arbitration. In the first place, Section 13, the arbitration clause, does not cover this kind of question. Secondly, this is the very question upon which the petitioner started an action against the respondents; it cannot be heard to say that the question it originally asked the court to decide should be decided by an arbitrator. Thirdly, the petitioner had the opportunity to attempt to take this question to arbitration when the question originally arose. Section 13 does not confine the right of arbitration exclusively to the union. Further, there is absolutely no conflict between the decision of the Court of Appeals in this case on this point and the decisions of other Courts of Appeals.

II. THE DECISION OF THE COURT OF APPEALS IS IN ACCORDANCE WITH THE CONTRACT BETWEEN THE PARTIES.

The Collective Bargaining Agreement between the parties provided (Section 15, 16a) that it could be terminated

by a sixty (60) day notice of termination. Further, the contract stated that if there were a delay in negotiating a new agreement, the Agreement would continue in effect until a new agreement was negotiated.

Both the District Court and the Court of Appeals found, and the petitioner does not bring the question to this Court (Petition for Writ of Certiorari, page 3), that the respondents' letter of June 1, 1948, was a notice of termination, and the contract between the parties thus expired on August 15, 1948. Thus the question remains as to the effect of the second paragraph of Section 15 (16a).

The Petitioner apparently argues that the effect of this second clause was to continue the contract indefinitely, and if the union desired to terminate the contract again, it was required to send another sixty (60) day notice. Such an interpretation is not in accordance with the language of the contract or the intent of the parties.

This second paragraph of Section 15 obviously was not meant to continue this contract indefinitely. Its purpose was to continue the contract past its termination date when negotiations for a new agreement continued past that expiration. Certainly, it is desirable that parties should negotiate as long as possible in an effort to seek a peaceful resolution of their differences, even if their negotiation continues past the expiration date of the old contract.

It cannot be said, however, that the negotiation having passed the expiration date, the contract continues indefinitely. The respondents had exercised their option to terminate the agreement as of August 15, 1948, by their letter of June 1, 1948 (17a). When the negotiations continued past this August 15 expiration date, the second paragraph of Section 15 applied *only so long as the negotiations continued.* The contract terminated when the negotiations ended, whether they ended in a new agreement or as here had failed and were completely deadlocked. The Court of Appeals in its opinion recognized this fact (295a). The secretary and assistant treasurer of the company testified

that a deadlock had been reached and that the company would not change its position, or offer a further increase (68a and 76a). The president of the local union testified that the parties were deadlocked, and that the company stated it was not going to offer any more money (89a, 90a). In addition, the acts of the company in covering partially-finished products, used daily by the employees (68a, 69a) and in covering, and oiling machines, normally in operation (85a, 86a), all of which was done prior to the strike vote of August 20, 1948 (83a, 84a), show that the company had no intention of changing its position, or breaking the impasse which had developed.

In view of all the foregoing factors, this contract could not continue beyond the end of the negotiations. Such an interpretation would render useless the union's notice of termination of June 1, 1948, which was sent under Section 15 of the Agreement and which terminated the contract as of August 15, 1948. The obvious result of the petitioner's argument would be to force every union to strike exactly at the expiration date of its contract regardless of the possibilities of settling the dispute by a few more days of negotiations.

The decision of the Court of Appeals is eminently correct. Any other result would go beyond the language of the contract and the obvious intent of the parties.

III. THE DECISION OF THE COURT OF APPEALS IS IN ACCORDANCE WITH THE FEDERAL STATUTE AND IS NOT IN CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS.

The petitioner apparently argues in its Petition for Writ of Certiorari that the Court of Appeals here erred in ignoring Section 8 (d) of the Labor Management Relations Act of 1947, 29 U. S. C. 158 d (Supp. 1950). The petitioner argues that since the negotiations continued past its expira-

tion date, the contract could not be terminated by the union without compliance with Section 8 (d), which requires a sixty-day notice of termination. Thus, since no such notice was sent, the strike was a breach of contract.

There is absolutely no basis for such an argument in the contract, in the statute, or in the cases the petitioner has cited. The respondents have argued, and both the lower courts so held, that the contract could not continue past the completion of negotiations even under the most liberal interpretation of the second part of Section 15.

Section 8 (d), has no application to this situation. This section defines the duty to bargain collectively to include the sending of a written notice of a proposed termination of a contract to the other party to the contract sixty days prior to the expiration date thereof.

In the first place, Section 8 (d) does not make a strike called without compliance with its terms a breach of contract. Section 8 (d) merely makes such a strike an unfair labor practice on the part of the union and subjects the employees involved to the threat of replacement (29 U. S. C. 158 (d) (4) Supp. 1950), *In re Eisen*, 21 Labor Relations Reference Manual 2491 (N. Y. Sup. Ct. 1947). Further an alleged violation of Section 8 (d) is exclusively for the National Labor Relations Board to decide. A brief glance at the legislative history makes this clear. Senate Report No. 105 on S. 1126, 80th Congress, 1st Session, page 24 and the remarks of Senator Taft on the floor of the Senate, 93 Cong. Record 3955, April 23, 1947. See also Developments in the Law—The Taft-Hartley Act, 64 Harvard Law Review 781, at pages 841-43. Nowhere does the Taft-Hartley Act provide that the failure to comply with Section 8 (d) shall operate to extend the collective bargaining agreement. Failure to comply with Section 8 (d) constitutes an unfair labor practice, and has no bearing upon this action for breach of contract.

Secondly, the union has fully complied with Section 8 (d) here. The letter of June 1, 1948 (17a), was a notice of

termination, as both lower courts have held, and it was sent more than sixty days prior to the expiration date of the contract, August 15, 1948 (16a). It was sent in accordance with the contract between the parties (16a) and in accordance with Section 8 (d) (1), and it was sufficient to terminate the contract as of August 15, 1948.

But the petitioner argues that when the negotiations continued past the expiration date, the contract thus continued and in accordance with Section 8 (d), the union was required to give another sixty day notice of termination. No basis for this argument can be found in the statute or elsewhere. Section 8 (d) was never intended to require two notices of termination. Its purpose was to provide a peaceful period after a notice of termination had been sent during which the parties could settle their differences through collective bargaining.

The practical result of the petitioner's position is obvious. No union would dare continue to negotiate beyond the expiration date of an agreement, for fear that it would not be able to strike until it had sent another sixty-day notice of termination. Every union would be forced to strike exactly at the expiration date of an agreement, regardless of the fact that there was a possibility of settlement, if the parties could meet for several more days. No union would permit itself to be faced with the slightest possibility of an impasse and then have to wait another sixty days before it could strike. It would call a strike at the expiration date, even though such a practice might make more difficult the possibilities of ultimate settlement.

Further, as the respondents have argued, Section 8 (d) does not even make a strike which is in violation of its terms a breach of contract. Neither the statutory language nor the legislative history indicates that it was the intent of Congress to make such a strike any more than an unfair labor practice.

There is clearly no conflict between the decision of the Court of Appeals here and the decisions cited by the peti-

tioner. The Boeing cases, *Boeing Airplane Co. v. National Labor Relations Board*, 174 F. 2d 988 (C. A. D. C. 1949) and *Boeing Airplane Co. v. Aeronautical Industrial District Lodge No. 751, et al.*, 91 F. Supp. 596 (W. D. Wash. 1950), affd. Per Curiam, 188 F. 2d 356 (C. A. 9 1951), cert. denied 72 S. Ct. 39 (October 8, 1951), both involving the same facts, present an entirely different situation from that present in this case.

The contract in those cases provided that it would be in effect until March 16, 1947, "and thereafter until a new agreement has been reached by the parties either through negotiation or arbitration." The contract said nothing about notices required to terminate the contract which did not contain an expiration date, and no such notices were ever sent. The parties negotiated proposed changes in the contract at various times from October of 1946 until April 22, 1948. On the later date the employees of the company went out on strike.

The company then refused to recognize or deal with the union, and the union then filed with the National Labor Relations Board a charge of unfair labor practices by the company under Section 8 (a) (1) and (5) of the National Labor Relations Act. The Board found that the company had violated these sections and issued a cease and desist order. The company appealed the order of the Board to the Court of Appeals and that court's decision is reported at 174 F. 2d 988.

The Court of Appeals found that the company was not guilty of an unfair labor practice in refusing to bargain with the union because the union had not complied with Section 8 (d) and thereby had lost its status as the collective bargaining agent for the employees. Thus the company had no obligation to bargain with the union.

That case involved a situation where the union, without any advance notice to the company, as Section 8 (d) requires, went on strike. Section 8 (d) was expressly enacted to prevent strikes without advance notice to the com-

pany and to various governmental agencies. In this case, the union sent the notices required by its contract and by Section 8 (d), and only after its contract had expired and negotiations had reached a deadlock, did it go on strike.

The other Boeing case, *Boeing Airplane Company v. Aeronautical Industrial District Lodge No. 751, et al.*, 91 F. Supp. 596 (W. D. Wash. 1950), affd. Per Curiam, 188 F. 2d 356 (C. A. 9, 1951), cert. denied, 72 S. Ct. 39 (October 8, 1951), was an action by the company against the union for breach of contract because of the abovementioned strike. Both lower courts denied recovery for reasons not material here, though stating that the contract, never having been terminated, was in effect.

The strike in the Boeing case occurred during the term of a contract which had been extended by the failure of the parties to reach agreement. It was preceded by no notices or no attempts to terminate the contract; there was no evidence that any deadlock in negotiations had been reached. The strike there was in violation of an existing contract. In this case, the strike occurred after the contract had been terminated by proper notice, after Section 8 (d) had been complied with, and after negotiations for a new contract had reached a deadlock.

It is interesting to note that Judge Hastie, who wrote the opinion of the Court of Appeals in this case, was one of the judges on the Court of Appeals which affirmed in a per curiam opinion, 188 F. 2d 356, the judgment of the District Court, 91 F. Supp. 596, in the breach of contract action in the *Boeing* case. Certainly he was aware of the decision in the *Boeing* case, decided only a few months before the decision of the Court of Appeals in this case, and could see no conflict between the two cases.

IV. THE STRIKE HERE DID NOT VIOLATE THE NO-STRIKE CLAUSE OF THE CONTRACT AND THE ARBITRATION PROCEDURE OF THE CONTRACT DOES NOT APPLY.

The strike of August 20, 1948, was not a violation of Section 4 of the contract. That section (9a) provides that there shall be no strikes, etc. "until all other means and every effort have been exhausted to adjust them (grievances or disputes) through the regular procedure set up by this agreement." The union proposals at the negotiation of the new contract were not subject to "the regular procedure set up by this agreement"; the arbitration clause (14a), providing for the arbitration of "all grievances, complaints, or any other differences arising in the mill or in the interpretation of this agreement" was not applicable. These demands were not the kind of grievances which arose during the term of an agreement and which could be resolved by arbitration. The testimony of the petitioner's witness makes this clear (74a, 75a). Thus, since this strike did not concern questions that could have been resolved by arbitration under Section 13 (14a), Section 4 (9a) was not violated.

The petitioner argues on pages 20-21 of its Petition for Writ of Certiorari that the Court of Appeals erred in holding inapplicable Section 13 (14a) the arbitration clause of the contract. Exactly what issue the petitioner considers should have been arbitrated is not too clear; it appears to have been the question of the applicability of the second paragraph of Section 15 (16a). This issue is not even one which comes within the terminology of the arbitration clause.

When the contract expired, by reason of the union's notice of termination (17a), the arbitration clause, Section 13 (14a), expired also. Its provisions were not binding on the parties.

The question which the petitioner now claims should have been arbitrated is the very question upon which the petitioner itself started suit. The petitioner, having begun an action on the basis of the fact that the contract did not expire, cannot now be heard to say that it desires to have this question heard by an arbitrator.

Further, and most important, Section 13 (14a), the arbitration clause, does not prevent the company from bringing any question to arbitration. The company had the right to initiate the arbitration procedure, yet it never suggested or began any such proceedings on the question it now claims should have gone to arbitration.

The cases cited by the petitioner as being in conflict with the decision of the Court of Appeals on this point, *Shirley-Herman Co. v. International Hod Carriers*, 182 F. 2d 306 (C. A. 2, 1950), and *International Union v. Colonial Hardwood Flooring Co.*, 168 F. 2d 33 (C. A. 4, 1948), have no bearing on the issue raised by the petitioner. Both of these cases were actions for damages by an employer against a union which had gone on strike during the term of its contract despite a no-strike clause and an arbitration clause in the contract. In the *Shirley-Herman* case, the employer had offered to arbitrate both orally and in writing. The Court of Appeals affirmed a jury verdict against the union. The *Colonial Hardwood Flooring Co.* case was an appeal by the defendant union from an order refusing to stay an action for damages against it. The union had moved for a stay pursuant to Section 3 of the United States Arbitration Act, 9 U. S. C. A. 3. The Court of Appeals held that the claim of the employer for damages for breach of contract was not subject to arbitration and that the United States Arbitration Act did not apply.

A reading of these two cases, cited by the petitioners, will make clear that they have no application to this case. There is no conflict between them and the decision of the Court of Appeals in this case.

V. CONCLUSION.

For these reasons the respondents submit that this case does not warrant further review and pray that the petition for the writ of certiorari be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1951.

No. 480.

PATERSON PARCHMENT PAPER COMPANY,
A CORPORATION,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, AND INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, BRISTOL LOCAL No. 500, UNINCORPORATED ASSOCIATIONS,
Respondents.

PETITIONER'S MEMORANDUM CITING INTERVENING CONFLICTING DECISIONS OF SIXTH CIRCUIT

and

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Paterson Parchment Paper Company, hereby advises the Court of intervening conflicting decisions by the Court of Appeals for the Sixth Circuit, and also herein replies to respondents' Brief in Opposition.

I. The Intervening Decision of the Court of Appeals for the Sixth Circuit in International Union of Operating Engineers v. Dahlem Construction Company, Dated December 31, 1951, Is in Conflict With the Decision of the Court of Appeals for the Third Circuit in the Instant Case.

After the filing of the Petition for Certiorari in this case on December 17, 1951, the Court of Appeals for the Sixth Circuit, on December 31, 1951, filed its opinion in *International Union of Operating Engineers v. Dahlem Construction Company.*

That opinion is reported at 20 C. C. H. Labor Cases § 66,693, and the full text also appears *infra,* page 17, as an Appendix to this Memorandum and Brief.

The following excerpts from the headnotes of the *Dahlem* case make it clear that this most recent decision by the Court of Appeals for the Sixth Circuit is in conflict with the decision of the Court of Appeals for the Third Circuit in the instant case:

> (1) ". . . Where a collective bargaining agreement which contains a "no strike" clause continues in force by its own terms, the contracting union is not relieved of liability in a damage suit under the LMRA for a strike in breach of that agreement by reason of having given prior notice, even if that notice complies with the requirements of the amended NLRA. Moreover, the notice requirements of the amended NLRA are not satisfied where notice is not also given to the Federal Mediation and Conciliation Service and to any appropriate state mediation agency within thirty days after notice to the party to the agreement. Under such circumstances, the contracting union is liable for damages resulting from a strike."
>
> (2) ". . . Where an agreement containing such [no-strike] clause provides that, upon timely notice prior to the stated expiration date of a desire to modify

the agreement, it shall continue in full force and effect until modified by a new agreement, the "no strike" clause continues to be binding after the original expiration date if the contracting union has given such notice, at least until either party shall act unequivocally to terminate the agreement. The notice of proposed modification is not equivalent to a notice of termination, nor is the agreement terminated by a strike. Therefore, where the union, after giving notice of proposed modification of such agreement, goes on strike after the original termination date but without first terminating the agreement, it is liable for damages resulting from the strike in violation of the agreement."

The principal issue in the *Dahlem* case was the same as that involved in the case now under review by the Court, namely, whether despite Section 301 of the Taft-Hartley Act a union can with impunity go on strike during the existence of a collective bargaining contract providing in terms that the agreement shall remain in full force and effect until superseded by another agreement.

In the instant case, despite the contract's express provision that even timely notice of termination would not terminate it until a new contract had replaced it, the Court of Appeals for the Third Circuit actually held that such a contract was terminated by the strike and that the union was thereby insulated from liability for breach of contract under Section 301 of the Taft-Hartley Act.

In the *Dahlem* case, the Court of Appeals for the Sixth Circuit clearly held under parallel circumstances that "the strike did not constitute a termination of the contract" and that the union was liable for breach of contract.

In so holding, the Court of Appeals for the Sixth Circuit relied in part on *Boeing Airplane Company v. Aeronautical Industrial District Lodge No. 751*, 91 F. Supp. 596, affirmed 188 F. 2d 356, discussed at length and relied upon in the Petition filed in this case.

The instant case is stronger than either the *Dahlem* case or the *Boeing* case because here the contract specified that even a notice of termination would *not* terminate the contract until "a new agreement is completed" (R-16).

Whether the event which would terminate the original contract is to be agreement on an entire new contract or on modifications to the original contract, is immaterial. The point is that, until that event occurs, the original contract remains in effect, and a strike breaches it. Under the Sixth Circuit's *Dahlem* case and the Ninth Circuit's *Boeing* case,[1] the employer then has a cause of action under Section 301, whereas under the Third Circuit's decision in the instant case, the employer is denied that cause of action.

The cases clearly conflict on this fundamental point of federal law.

The *Dahlem* decision also emphasizes the validity of petitioner's contention that, irrespective of the Union's alleged partial compliance with the notice requirements of Section 8(d), where the contract itself binds the union not to strike until a new agreement had been completed, it is liable for damages caused by its strike.

There could be no more unambiguous language than the provision in Section 15 of this contract that, "should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed' (R-16). This is substantially identical to the *Dahlem* contract, providing, "Should such notice of a desire to modify the terms of this agreement be given by either party to the other, then this agreement shall remain in full force and effect until modified by a new agreement resulting from the negotiations."

The Sixth Circuit held that this language means what it says—that the original contract remains in effect until a

1. In the *Boeing* case, both the District Court (91 F. Supp. 596) and the Court of Appeals (188 F. 2d 356) held that the union, by its strike, had breached the contract. The employer was denied recovery only because of those courts' decisions that the company then rescinded the contract and thus lost its right to claim damages.

new agreement becomes effective and a strike before that time is an actionable breach, irrespective of any notice the union may have given. The Third Circuit, on the contrary, held that if the union gives notice during the original contract period it can terminate the contract by a strike, without liability, whenever it believes that further negotiation would be futile, despite the provision that the termination notice has no effect until "a new agreement is completed" and despite Section 301.

This conflict is also on a fundamental point.

This Court must make a choice between the Sixth Circuit's view, which would provide the industrial stability and peace which are the objectives of this statute, and the Third Circuit's view, which invites and will produce widespread economic warfare and interruptions in the flow of interstate commerce.

In holding that the conventional legal relief provided under Section 301 supplements the administrative relief provided under Section 8(d), (cf. *International Longshoremen's & Warehousemen's Union v. Juneau Spruce Corporation,* 20 Law Week 4082, 4083) the Court of Appeals for the Sixth Circuit also emphasized that, even "if appellant had complied with Section 158(d), 20 USC, that fact in no way rendered it immune from the damages resulting from the strike in violation of the contract". Thus, the *Dahlem* decision is doubly in conflict with the decision of the Court of Appeals for the Third Circuit in the instant case. That court perverted a notice which actually continued the contract indefinitely, into one which they held not only terminated the contract but also immunized the union from damages for its breach. The Sixth Circuit's contrary holding makes the conflict clear.

The Courts of Appeals for the Sixth, Ninth and District of Columbia Circuits have now agreed, contrary to the decision below, that when a union goes on strike during the existence of an interim contract of indefinite duration the

employer has a cause of action under Section 301 of the Taft-Hartley Act. Those courts' decisions make it clear that the legal consequences of such a strike do not depend upon *how* the contract of indefinite duration came into existence. A strike is a breach whether the original contract itself is one of indefinite duration (*Boeing*), or has been continued in effect until modifications have been agreed upon (*Dahlem*), or until a new contract is negotiated (*Paterson*).

And the fact that notice under Section 8(d) may have been given does not relieve the Union of liability for the strike. On this important statutory point the Third Circuit's conflict with the Sixth Circuit is clear.

The different approach employed by the other Courts of Appeals and the different result reached by them can be summarized in a few paragraphs:

(1) In *Boeing*, the contract provided that it should remain in full force and effect from March 16, 1946 to March 16, 1947 "and thereafter until a new Agreement has been reached by the parties either through negotiation or arbitration". Beginning in October, 1946, the parties negotiated; used the Federal Conciliation Service; reached an impasse; and finally, the union summarily rejected a new company offer and went on strike in April, 1948. All three courts which considered the question held that the union had breached the contract:

(a) The Court of Appeals for the District of Columbia held that the parties "were negotiating a new agreement and until such new agreement was reached the 1946 contract was in full force and effect", 174 F. 2d 988 at 990; "the strike of April 25 was a breach of the 1946 contract which was still in force on that date", Id. at 991; and the union's twenty-four hour notice was "not in compliance with the no-strike clause of the contract and, even assuming the existence of an interim contract, it was not sufficient notice under either the 1946 contract or the so-called interim contract", ibid.

(b) The District Court for the Western District of Washington said: "We hold (assuming there was no breach of the contract by the Company prior to April 22, 1948), that the work stoppage occurring on that day as a result of the acts of Lodge 751 was a material breach of the contract", 91 F. Supp. 596 at 609; and that "the strike was a material breach of the agreement (in the absence of a prior breach by the company) . . .", Id., at 611.

(c) The Court of Appeals for the Ninth Circuit said: "We have examined the entire record and are satisfied that the learned district judge correctly concluded, in the light of all of the circumstances of the case, that at the time immediately after the strike began when Boeing elected to terminate the contract, the union had been guilty of a material breach . . .", 188 F. 2d 356, 357. Recovery under Section 301 was denied only because the courts held the company had elected to rescind the contract and had lost its right to claim damages.

(2) In the *Dahlem* case, the contract provided that, after either party gave notice of a desire to modify the contract, "this agreement shall remain in full force and effect until modified by a new agreement resulting from the negotiations". After timely notice of a desire to modify the contract had been given, the appellant Union participated in negotiations but, upon failure to reach an agreement, went on strike. The Court of Appeals for the Sixth Circuit held that "the strike did not terminate the contract", citing the *Boeing* case, and "since the Contract was not terminated under Section 2 of Article 4, the no-strike clause remained in effect, was violated by appellant, and it became liable for resulting damages", 20 C. C. H. Labor Cases § 66,693, page 80,630.

In the case now under review, the contract provided that, even if timely sixty day notice of termination were given, if there should be "a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed" (R-16).

The Union gave notice which petitioner does not believe to be adequate as notice of termination but which, even if it did constitute such notice, would only have the effect of bringing the above clause into play.

Negotiations continued past the stated termination date, August 15, 1948. Conferences were held on August 17, 1948 and August 20, 1948. The Union rejected a new company offer (which it later accepted, after a three-month strike, R-166) and walked out of the latter conference and onto the picket line. The Court of Appeals for the Third Circuit, without even mentioning Section 301 or any other section of the Taft-Hartley Act, absolved the Union from liability for damages, stating that, ". . . in accordance with the contract, termination was suspended by negotiations toward a new contract. These failed and ended. The old contract thereupon terminated pursuant to the permitted election already made manifest by timely notice as provided in the document itself. The obligation not to strike, like other obligations of the contract, ceased to exist. For this reason, the complaint was properly dismissed. Other points urged need not be considered."

This cavalier approach and chaotic result are shocking. They also disclose clear conflicts with the Sixth and Ninth Circuits, which require that certiorari be granted in this case, particularly in view of the nation-wide use of renewal and extension clauses, as indicated on Page 16 of the Petition for Certiorari.

II. The Intervening Decision of the Court of Appeals for the Sixth Circuit in Hamilton Foundry and Machine Company v. International Molders and Foundry Workers Union, Dated December 11, 1951, Is in Conflict With the Decision of the Court of Appeals for the Third Circuit in the Instant Case.

After the filing of the Petition for Certiorari in this case on December 17, 1951, there was reported on January 2, 1952 the decision of the Court of Appeals for the Sixth

Circuit in *Hamilton Foundry and Machine Company v. International Molders and Foundry Workers Union.* See page 2273 of United States Law Week dated January 2, 1952.

In that opinion, the Court of Appeals for the Sixth Circuit stated, *inter alia,* "We agree . . . that a state statute cannot change or diminish a substantive right created by a federal statute, . . . but a state statute is applicable where it deals with the remedy rather than with the substantive rights. . . . The Ohio Statute of Frauds affects the remedy only."

In contrast, as is emphasized in the Petition for Certiorari (Pages 12 to 17), the Court of Appeals for the Third Circuit in the instant case, relying solely on state law, has *nullified* the employer's federally-granted cause of action for breach of contract. The court below was not dealing merely with the remedy—it held that *no substantive right existed.* In so doing, it expressly stated (R-293) that it was applying only the law of Pennsylvania. It refused to apply the federal law. It then denied without opinion (R-315) petitioner's request (R-301) that it cite the Pennsylvania law which it purported to be applying. Thus, the Third Circuit, in the case at Bar, denied petitioner's federal rights on the ground that uncited Pennsylvania law not only governed those rights but also effectively abolished them.

The Sixth Circuit's contrary view on this point is also indicated in its opinion in the *Dahlem* case:

> ". . . Assuming, but not deciding, that the contract herein involved, after July, 1949, became a contract of indeterminate duration, appellant's contentions still are without merit. Kentucky law does not control, for Congress has occupied the field and has closed it to state regulation. *International Union of United Automobile etc. Workers v. O'Brien,* 339 U. S. 454."

Thus there is also a conflict on this point between these two Circuits, as well as between the decision under review

and the decision of this Court in *American Federation of Labor v. Swing*, 312 U. S. 321, 326, and in *International Union v. O'Brien*, 339 U. S. 454 and cases there cited.

This conflict also requires review of the decision below.

III. This Strike in Violation of the No-Strike and Arbitration Clauses Is Exactly the Type of Breach of Contract Made Actionable in the Federal Courts by Section 301 of the Taft-Hartley Act.

This Court said only yesterday that in enacting Section 301 "Congress was here concerned with reshaping labor-management legal relations; and it was taking precise steps to declared and announced objectives." *International Longshoremen's and Warehousemen's Union v. Juneau Spruce Corporation*, No. 280, October Term 1951, decided January 7, 1952, 20 Law Week 4082.

In that same decision, this Court pointed out that the Taft-Hartley Act represents "the uniform, national policy" which "has both administrative and conventional legal sanctions".

The decision below deliberately substituted an alleged contrary state-law policy in place of this high national policy—and permitted this union to defy the federal law with complete impunity. On facts which were substantially identical, the Courts of Appeals for the Second, Fourth, Sixth, Ninth, and District of Columbia Circuits found it necessary to carefully consider and decide the parties' rights and obligations according to the provisions of this federal Act. It is therefore readily apparent that the lower court in this case is not only in conflict with those Circuits but has acted in an arbitrary manner requiring the exercise of this Court's supervisory powers.

In considering the legal significance of the Union's actions in this case, there are some facts which must be kept in mind in assessing the parties' and the lower court's attitudes toward the Congressional scheme designed to foster industrial peace.

For example, in the Union's Brief in Opposition (Page 4), it is bluntly stated that "the threat of a strike by the union was constantly present throughout these meetings and the company was aware of such a possibility". Consequently, both the union and the lower court are extremely unrealistic in emphasizing the undenied fact that the company took certain precautionary measures during the last few days the plant was open. If the management had done otherwise, it would have been derelict in its duty to both the stockholders and the employees. The management had an obligation to protect the company's plant and equipment in the event of a strike, and it would have had no excuse for acting as though a strike were not likely, since "the threat of a strike by the union was constantly present".[2]

A similar indication of the Union's attitude was its failure to give the required notice to either state or federal mediators, even though its own threat of a strike was "constantly present". The Union's only reference to con-

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2. Discussing a strikingly similar situation, the Superior Court of Pennsylvania said, in *Climax Fire Brick Co. v. Board*, 166 Pa. Superior Ct. 481, 485-486:

". . . Ferrara was the agent of the Union and claimant's agent, and they were bound by his acts. As late as April 26, 1947, Ferrara, at a meeting at which claimant was present, informed Climax that 'the men will cease work on May fourth.' Climax had the right, even if it was not its obligation, to rely upon the positive statement of the Union's representative and claimant's agent. *Climax was not bound to act as though no strike would take place in the face of Ferrara's positive assertion to the contrary.* It was authorized to accept his assertion as an authentic expression of the definite policy of the Union, and to act accordingly. Relying upon his statement, Climax was permitted to make such preparation for meeting the exigency presented by the threatened strike as its managers in the exercise of good faith deemed necessary. *It was not required to await the actual and visible refusal of the employees to return to work.*

"Of course, an employer may not use a strike notice as a mere pretext for closing his plant and discharging his employees. He cannot secure a bargaining advantage by such means. Borrowing counsel's penetrating phrase, 'he cannot jump the gun on his employees.' But when a strike is imminent, *when an employer has been officially notified that a strike will occur, and has reasonable grounds for a belief that the strike will actually take place, he may, prior to and in anticipation thereof, take reasonably necessary measures to protect his property during the pendency of the strike.*" (Emphasis added.)

Substituting "Carella" for "Ferrara", and "Paterson" for "Climax" in the above statement of the law would make it exactly descriptive of this phase of the instant case. This alleged ground of justification for the decision below is frivolous.

ciliation which can be found in this record appears on Page 249, where a representative of the International stated, on August 16, 1948—60 days after the alleged notice of termination and only four days before the strike—"We have notified the Conciliator that we have a serious situation here." The union was the party planning to halt production, and yet it coldly ignored the public agencies established to prevent such disorders.

Moreover, although the union, even in this Court, attempts to convey the impression that the company made a "final offer" on August 17, 1948, it is clear from the Union's own record reference (R-257) that the company patiently encouraged further discussion.[3]

Similarly, the statement on Pages 3 and 4 of the Union's Brief in Opposition that the Union notified the company that it "desired to terminate the agreement and to negotiate a new contract for the coming year" is not borne out by the record. What the Union requested was "a meeting with the company for the purpose of discussing changes in the contract for the coming year" (R-17).

Furthermore, even respondents' statement as to the parties to this contract is inaccurate. The contract (R-6) is between the company and "the International Brotherhood of Paper Makers *and its* Bristol Local #500", and provides that "the Company recognizes the International Brotherhood of Paper Makers as exclusive bargaining agency . . ." This is considerably different from the statements on Page 3 of the Brief in Opposition that "petitioner and the respondent local were signatories" and "this agreement is also signed" by the International's "Regional Director."

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3. The record discloses the following statement by one of the company's negotiators:

> "I don't think the Company is of mind to say to you that there is no purpose in further negotiations. I believe negotiations between the Union and the Company should always continue," said Mr. Beechwood. "Possibly we may be a little more convincing next time or you may realize our position a little bit better. It may be we could have the Board of Directors take a gamble on something starting as of yesterday."

It is also important to note, contrary to the statement on Page 8 of the Union's Brief in Opposition, that the company has never admitted, in this Court or elsewhere, that the contract actually terminated on August 15, 1948. The company has, in this Court only, proceeded on the basis of the lower courts' decision that the union's letter of June 1, 1948 was a notice of termination. The company's position in this Court is that, even if that letter were notice of termination, under Section 15 such termination was suspended and the contract continued in effect, by its own terms, "until such time as a new agreement [was] completed".

Moreover, the Union's action in breaching this contract after only two conferences in the five days immediately following the originally specified termination date was not only unlawful but contrary to the Union's own By-Laws. They specify that "no strike order shall be issued by a subordinate Union unless and until the proposed strike is sanctioned by the International Executive Board" (R-273). Although the Local called the strike prior to authorization by the International (R-175), the International did later sanction the strike (R-178), advised every local throughout the United States to "get in there" and "give 'em Hell" (R-168, 169), and exulted in the fact that the company's factory had become a "perfectly paralyzed plant" (R-179).[4]

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4. The International Union clearly recognized that, under Section 4 of the contract (the "no-strike" clause), it is liable for any breach of contract. It proposed (R-221) to add the following to Section 4:

"It being understood and agreed that any strike not expressly authorized by the Union in accordance with the International Brotherhood of Paper Makers' Constitution, By-Laws, Standing Rules and General Laws as amended January 1, 1948, shall be deemed for all purposes, an unauthorized strike *for which there shall be no financial liability on the part of the International Brotherhood of Paper Makers,* its local Union, or the officers thereof." (Emphasis added).

The International fully realized the significance of Section 4 and the consequences of not having it amended to include the above proposal. The International's Regional Director said (R-244):

"This is merely a protection for the International so that we are not caught out on a limb," explained Mr. Daggett. Continuing, he said, "we will be responsible so far as we counsel, authorize,—or direct; but any-

Respondent argue on pages 9 and 11 of the Brief in Opposition that, if Section 15 should be construed to bind the union to its contract after the stated expiration date, no union would dare to negotiate at all after the stated expiration date of a contract and would be forced to strike on that date. The short answer is that if the union does not want to be so bound it should not sign a contract like this one providing that it "shall remain in full effect until such time as a new agreement is completed". But this Union not only *did* sign that contract, they drafted this clause and insisted on its being put into the contract (R-250). By its terms they *were* bound not to strike. They *did* so strike and Section 301 subjects them to liability for that breach.

As to Section 8(d), petitioner has made three points: (1) the Union did not abide by the notice requirements of that section; (2) even if it had, such compliance does not relieve it from liability under Section 301 for its breach of contract; (3) in appraising the legal significance of the Union's strike only five days after the stated termination date and in the face of the extension clause, the notice requirements of Section 8(d) are significant as a plain manifestation of the Congressional intention that labor agreements may not be abruptly and irresponsibly breached by any party.

This case illustrates the importance of that legislative policy and the stubbornness of this Union's flaunting of it. The Union did not call the mediators, as required by Section 8(d), thirty days before the stated termination date. The Union refused to continue work while further discussions went on, looking towards agreement on a new wage scale. They abruptly refused the same identical company offer (R-172) which, under the aegis of mediation,

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thing done without our knowledge or authorization, we definitely will not be."

Thus the union entered into this contract fully aware of its legal responsibilities, which it later ignored. It should not be permitted to escape its liability under the law for such a breach.

they accepted three months later (R-166). If they had carried out the Congressional policy, this costly interruption in the flow of interstate commerce could have been avoided. Having transgressed, they must now face the penalty under Section 301, and the lower court's decision to the contrary is not only erroneous on an important federal question but also in conflict with other Courts of Appeals.

The Union's Brief in Opposition is no answer to the Petition. It leaves untouched the validity of all the reasons for a Grant stated therein and in this Memorandum. It merely reflects and reiterates the Union's arrogant attitude that it can claim the benefits of a continuing contract one day and still be free to breach that contract the next day or any day it chooses to do so. It is not difficult to realize what the Union's position would have been if the company had been the one to walk out of the conference and close the factory on August 20, 1948. Cf. *Boeing Airplane Company v. National Labor Relations Board,* 174 F. 2d 988, 991.

This Court should review this case to settle the conflicts already discussed and to assure judicial enforcement of the legal rights recognized in this important federal statute.

Respectfully submitted,

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APPENDIX.

International Union of Operating Engineers, Local No. 181, Appellant, v. Dahlem Construction Company, Appellee.

United States Court of Appeals, Sixth Circuit. No. 11297. December 31, 1951.

On Appeal from the United States District Court for the Western District of Kentucky. Affirmed.

LABOR MANAGEMENT RELATIONS ACT—
NATIONAL LABOR RELATIONS ACT.

Damages for Breach of Collective Agreement—"No Strike" Clause—"Cooling Off Period" Notice—Section 301 of the LMRA which provides for damage suits for breach of collective bargaining agreements is entirely separate and distinct from the unfair labor practice provisions of the amended NLRA which require a sixty-day "cooling off period" notice prior to termination or modification of a collective bargaining agreement. Where a collective bargaining agreement which contains a "no strike" clause continues in force by its own terms, the contracting union is not relieved of liability in a damage suit under the LMRA for a strike in breach of that agreement by reason of having given prior notice, even if that notice complies with the requirements of the amended NLRA. Moreover, the notice requirements of the amended NLRA are not satisfied where notice is not also given to the Federal Mediation and Conciliation Service and to any appropriate state mediation agency within thirty days after notice to the party to the agreement. Under such circumstances, the contracting union is liable for damages resulting from a strike.

Damages for Breach of Collective Agreement—Strike in Violation of "No Strike" Clause—Termination of Agreement. Under Section 301 of the LMRA, an employer is entitled to recover damages for a strike in violation of a "no strike" clause in a collective bargaining agreement. Where an agreement containing such clause

provides that, upon timely notice prior to the stated expiration date of a desire to modify the agreement, it shall continue in full force and effect until modified by a new agreement, the "no strike" clause continues to be binding after the original expiration date if the contracting union has given such notice, at least until either party shall act unequivocally to terminate the agreement. The notice of proposed modification is not equivalent to a notice of termination, nor is the agreement terminated by a strike. Therefore, where the union, after giving notice of proposed modification of such agreement, goes on strike after the original termination date but without first terminating the agreement, it is liable for damages resulting from the strike in violation of the agreement.

Before ALLEN, MCALLISTER and MILLER, Circuit Judges.

[*Statement of Case.*]

ALLEN, C. J.: This action for damages was instituted under Sec. 185, 29 U. S. C., for violation of a contract between an employer and a labor organization representing the employees in an industry affecting commerce. The court directed a verdict for the plaintiff (appellee here), but ordered the jury to award such damages as were the direct and proximate result of the strike. The jury found the amount to be $1,850, for which judgment was entered and this appeal was then prosecuted.

The controlling question is whether under the applicable statutes appellant is liable for the damages proved. The case arises out of the following facts:

On July 15, 1948, the General Contractors Association, Inc., which represented certain general contractors in and around Louisville, Kentucky, including appellee, and the Louisville Building & Construction Trades Council, which was the bargaining agent for seven affiliated unions, entered into a written contract to which appellant was made a party by mutual consent. The contract covered wages

and other conditions of employment, and included arbitration of disputes and a no-strike clause. It also contained a provision to the effect that if either party gave written notice of a desire to modify any of the terms of the contract, negotiations should be entered into by the parties and in such case the agreement should remain in full force and effect until modified by a new agreement.

On March 4, 1949, the Building & Construction Trades Council gave written notice to the Contractors Association of its desire to modify articles 1, 2, 3, and 4 of the contract. On March 10, 1949, the Contractors Association gave the Building Trades Council written notice of its desire to modify article 2 of the contract pertaining to wages. Negotiations were entered into between the representatives of the Building Trades Council and the Contractors Association, and continued thereafter until September 3, 1949. July 28, 1949, the Contractors Association refused to agree to a wage increase; but the five unions working on appellee's building projects continued operations. July 29, 1949, the Contractors Association opened separate negotiations with appellant. During the period in controversy appellee had in its employ no member of appellant's union. August 11, 1949, the Contractors Association sent appellant a draft of a new contract which was refused, and on August 15 the appellant went out on strike. It placed pickets successively on five of appellee's construction jobs, causing them to remain at a standstill. As a result appellee was required to pay overtime, which would not otherwise have been necessary; to pay demurrage on railroad cars, perform unnecessary hauling, and to carry overhead without production. Appellant does not contend that the amount of damages allowed by the jury is excessive.

May 5, 1949, appellant sent to the Federal Mediation and Conciliation Service notice of the existence of the dispute, and later, on June 6, 1949, the Building Trades Council sent a similar notice to the Federal Mediation and Conciliation Service.

The action is based upon the contention that appellant breached its contract by going on strike August 15, 1949, without notice to appellee or to the General Contractors Association.

The applicable sections of the contract provide:

Article 3, section 3.

"Neither the Association, Association members, Councils or Unions signatory hereto shall engage in, permit, induce, or encourage any stoppage of work, slowdown, strike, lockout or concerted refusal to work by reason of any dispute or difference of opinion or policy between the parties hereto, save and except the failure of the other party to abide by a decision of the Joint Arbitration Committee, or a judgment of a Court of Law."

Article 4, section 2.

"This agreement shall be in full force and effect until the first day of July, 1949. Should either party hereto give written notice during the month of March, 1949, of a desire to modify any of the terms and provisions of this contract, negotiations will be entered into by the parties hereto for the renegotiation of this agreement. Should such notice of a desire to modify the terms of this agreement be given by either party to the other, then this agreement shall remain in full force and effect until modified by a new agreement resulting from the negotiations."

Appellant contends that it had the right to strike at any time after July 1, 1949, since it had properly given the 60-day cooling-off period notice provided for in Section 158(d), 29 U. S. C., quoted in the margin.[1] This statute does not absolve appellant of liability for its breach of the no-

1. [This footnote quoted Section 8(d) of the Taft-Hartley Act, which appears at Page 23 of the Petition for Certiorari in the instant case.]

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strike provision of its contract with appellee, for the reason (1) that appellant did not give notice in accordance with the express terms of Section 158(d); and (2) that this statute does not apply to actions for damages instituted under Section 185(a), 29 U. S. C.

[*Sufficiency of Notice.*]

On the first point, the Building Trades Council gave its notice to modify the contract on March 4, 1949. This was sixty days prior to the expiration date of the contract. On May 5, 1949, more than sixty days after the notice to modify was given to the Contractors Association, appellant notified the Mediation and Conciliation Service of the existence of the dispute. A similar notice was given by the Building Trades Council to the Mediation and Conciliation Service more than ninety days after the notice of modification was given. But Section 158(d), 29 U. S. C., requires that the notice be sent within thirty days after the notice of modification. This provision is mandatory. The purpose of enacting the statute was that industrial strife might be prevented by prompt action of the Mediation and Conciliation Service. If the Service is delayed in communicating with the parties and in offering mediation and conciliation, its efforts often will be frustrated. Since appellant and its representative, the Building Trades Council, did not comply with this mandatory provision, its defense upon this point is not sustained.

[*Application to Damage Suit.*]

Moreover, Section 158, 29 U. S. C., does not apply to an action for damages under Section 185, 29 U. S. C. The two statutes are included in totally separate divisions of the National Labor Relations Act, Section 158 being found in Subchapter II—National Labor Relations—and Section 185 being included in Subchapter IV—Liabilities of and Restriction on Labor and Management. Section 158 in its original

form was entitled "Unfair labor practices by employer defined" and included five paragraphs defining unfair labor practices which are written in the present statute. New definitions of unfair labor practices were included in the amended act and approximately two-thirds of Section 158 is devoted to such definitions. The paragraphs relied on by the appellant, (d) 1, 2, 3, and 4, were also added to Section 158, and the heading of the section is "Unfair labor practices." No provisions in Section 158 relate in any way to Section 185, the heading of which is "Suits by and against labor organizations—Venue, amount and citizenship." The wording of the statutes strongly supports the conclusion that even if the appellant had complied with Section 158(d), it would receive no immunity from a suit for damages for breach of contract under Section 185.

This conclusion is supported by the legislative history of the amendment to the Labor Management Relations Act made in 1947. The Senate amendments to the Act at one point contained a provision which defined the violation of the terms of the collective bargaining contract as an unfair labor practice. This provision was omitted by the Senate and House in conference, for the reason that "Once parties have made a collective bargaining contract the enforcement of the contract should be left to the usual processes of the law and not to the National Labor Relations Board." House Conference Report No. 510, on H. R. 3020, 80th Cong. 1st Sess., 1947, pages 41 and 42. The striking out of the provision which defined violation of the contract as an unfair labor practice is strong evidence that Congress considered breaches of labor contracts to be separate and distinct from unfair labor practices, and intended that they should be separately handled by separate tribunals.

It follows that if appellant had complied with Section 158(d), 29 U. S. C., that fact in no way rendered it immune from the damages resulting from the strike in violation of the contract. The question therefore is whether the contract was in effect upon August 15, 1949, when appellant

struck. Appellant contends that the contract was terminable at will by unilateral action within a reasonable time after July 1, 1949, was terminated by it, and was not in effect when the strike was called. In support of this conclusion it cites *Boeing Airplane Co. v. National Labor Relations Board,* 174 Fed. (2d 988, 991 [16 LABOR CASES § 65,164] (C. A. D. C.), which holds that a contract of undetermined duration may become terminable by unilateral action on the part of either party after a reasonable time has elapsed. Appellant derives no assistance from this decision, for what the court actually held was that the contract could be terminated after proper notice; that the strike did not amount to termination; and it held the union liable for a material breach of the no-strike clause of the contract. This holding squarely supports the judgment of the District Court here.

[*Termination of Agreement.*]

What the unilateral act of termination is, which it claims caused the contract to expire, appellant does not clearly explain. The notices given by appellant to appellee were notices not of termination, but of a desire to modify the contract, and recognized that the contract was in full force. The secretary of the Building Trades Council stated in direct examination that the unions wanted an entirely new agreement; but on cross-examination he admitted that changes of all of the sections of each article of the contract were not desired, and refused to say how many sections the unions wished to have changed. The written notices addressed to the Mediation and Conciliation Service by the appellant and the Building Trades Council stated that a dispute existed between the parties, and made no mention of any desire to terminate the contract. But now it is contended that a notice of proposed modification is equivalent to a notice of termination; that Section 2, article 4, of the contract, providing that the agreement should re-

main in full force and effect during negotiations for modification did not come into play, and that the union therefore was not bound by the no-strike clause.

Such a construction would distort the express terms of the statute and run counter to several decisions construing it. A notice to terminate must be clear and explicit. *Texoma Natural Gas Co. v. Oil Workers International Union, etc.*, 58 Fed. Supp. 132; affirmed 146 Fed. (2d) 62 [9 LABOR CASES § 62,432] (C. A. 5), certiorari denied, 324 U. S. 872. A notice of modification is not a notice of termination and does not effect termination of the contract. *United Steel Workers of America v. Shakespeare Co.*, 84 Fed. Supp. 267 [16 LABOR CASES § 64,978]; *Mountain States Telephone & Telegraph Co.*, 81 Fed. Supp. 397 [15 LABOR CASES § 64,724]. The strike did not constitute a termination of the contract. *Boeing Airplane Co. v. Aeronautical Industrial Dist. Lodge No. 751,* 91 Fed. Supp. 596 [18 LABOR CASES § 65,845]; affirmed 188 F. (2d) 356 [19 LABOR CASES § 66,258].

Appellant relies on various Kentucky cases which hold that a contract for an indefinite time is terminable at will. This no doubt is the correct rule of law upon the general proposition. *Boeing Airplane Co. v. Aeronautical Industrial Dist. Lodge No. 751, supra.* Assuming, but not deciding, that the contract herein involved, after July, 1949, became a contract of indeterminate duration, appellant's contentions still are without merit. Kentucky law does not control, for Congress has occupied the field and has closed it to state regulation. *International Union of United Automobile etc. Workers v. O'Brien,* 339 U. S. 454 [18 LABOR CASES § 65,761]. In any case the Kentucky decisions give little comfort to the appellant, for they hold that a contract indefinite in duration and lacking mutuality is enforceable if executed. *Victoria Limestone Co. v. Hinton,* 156 Ky. 674, 676; *Johnson v. International Shoe Co.,* 228 Ky. 450, 452. In the instant case the contract was performed by all parties except appellant, including the carpenters, hod car-

riers, cement workers, truck drivers and laborers who endeavored to work for the appellee until prevented by appellant's picket lines. Since the contract was not terminated, under Section 2 of article 4 the no-strike clause remained in effect, was violated by appellant, and it became liable for resulting damages.

The judgment is affirmed.

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IN THE

Supreme Court of the United States.

October Term, 1951.

No. 480.

PATERSON PARCHMENT PAPER COMPANY, A CORPORATION,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, AND INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, BRISTOL LOCAL No. 500, UNINCORPORATED ASSOCIATIONS,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Paterson Parchment Paper Company prays this Court grant rehearing of its order of February 4, 1952, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Third Circuit in the above entitled case, as prayed for in the petition filed December 17, 1951.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

On February 4, 1952, the same day certiorari was denied in this case, the Court handed down a written opinion

which, on two vital points, is itself inconsistent with the result permitted to stand in the instant case.

In No. 374, *John F. Dice v. The Akron, Canton & Youngstown Railroad Co.*, U. S. , 20 Law Week 4120, all nine members of this Court agreed that state law cannot govern either rights or the validity of releases of rights granted under the Federal Employers Liability Act.

Mr. Justice Black, for the Court, said:

> "Manifestly the federal rights affording relief to injured railroad employees under a federally declared standard could be defeated if states were permitted to have the final say as to what defenses could and could not be properly interposed to suits under the Act . . ."

Similarly, Mr. Justice Frankfurter, for the concurring and dissenting Justices, said:

> "The judgment of the Ohio Supreme Court must be reversed for it applied the State rule as to validity of releases . . ."

Nothing could be clearer. The *Dice* case clearly holds that, where a federal statute confers a right, both state and federal courts must determine the existence of the right, and defenses to it, according to federal law.

But in the instant case, wherein petitioner asserted an important federal right granted by a federal statute, the Court of Appeals openly refused to apply federal law (R-293) and denied the right solely on the basis of state law.

True, the instant case involves an employer's right under the Taft-Hartley Act, not an employee's right under the Federal Employers Liability Act. But it is inconceivable that employers' federal rights are to be treated differently than employees' federal rights.

This Court is under a duty to clarify the inconsistency between the *Dice* case and the decision here denied review on the same day.

Moreover, if employers' rights under Section 301 of the Taft-Hartley Act are still to be vulnerable under contrary state laws which Section 301 was deliberately enacted to supersede, the Court is under a duty to forthrightly so state so that the Congress may know that this important legislation has not had the intended effect.

If it be said that in this case there is only a question of breach of contract, the short answer is that that is also all that Section 301 involves. Further, it has not yet been suggested that contract causes of action are to be given less consideration or to be judged by less favorable legal rules than tort causes of action.

Indeed, the *Dice* case also stands for the proposition that there must be nation-wide uniformity in applying *any* statute granting federal rights in the employer-employee field.

Mr. Justice Black, for the Court, said:

> "Moreover, only if federal law controls can the federal Act be given that uniform application throughout the country essential to effectuate its purposes . . ."

Similarly, Mr. Justice Frankfurter, for the concurring and dissenting Justices, said:

> "In order to prevent diminution of railroad workers' nationally-uniform right to recover, the standard for the validity of a release of contested liability must be federal . . ."

In this respect, the *Dice* decision is also inconsistent with the result below which is left undisturbed. There can be no uniformity when the rule applied and the result obtained in each case depend upon which Court of Appeals

has jurisdiction. Other Courts of Appeals [1] have followed the rule unanimously reaffirmed by this Court in the *Dice* case. The Third Circuit, on the contrary, held that the question whether this contract between employer and employees was or was not in existence, and consequently whether a cause of action existed under Section 301, was governed solely by the law of Pennsylvania.

This Court cannot consistently first apply the "uniform" federal law rule to cases under one federal statute and then permit Circuit-to-Circuit variation in applying it to cases under another federal statute governing another phase of the same field of law.

In this respect also, if it be said that this case involves only a particular contractual situation, it is equally clear that an infinitely greater variety of particular tort situations has arisen under the Federal Employers Liability Act, and this Court has not been slow to review them, one by one, to preserve federal standards and the uniformity rule.[2]

CONCLUSION.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Third Circuit.

Respectfully submitted,

GEORGE E. BEECHWOOD,
JAMES M. MARSH,
Counsel for Petitioner.

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1. Sixth Circuit: *International Union of Operating Engineers, Local No. 181 v. Dahlem Construction Co.*, 20 C.C.H. Labor Cases § 66,693, reprinted at Page 17 of Petitioner's Memorandum and Reply Brief filed in the instant case.

Ninth Circuit: *Boeing Airplane Company v. Aeronautical Industrial Lodge No. 751*, 188 F. 2d 356.

District of Columbia Circuit: *Boeing Airplane Company v. National Labor Relations Board*, 174 F. 2d 988.

2. See, for example, *Brown v. Western R. Co.*, 338 U. S. 294; *Lillie v. Thompson*, 332 U. S. 459, and cases there cited.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of the rules of this Court.

GEORGE E. BEECHWOOD,
Counsel for Petitioner.